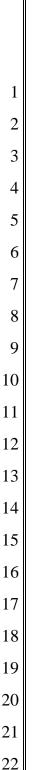
	LEWIS ROCA LAWYERS		
1 2	40 North Central Avenue Phoenix, Arizona 85004-4429 Facsimile (602) 262-5747 Telephone (602) 262-5311		
3	Randolph J. Haines-State Bar No. 005440 Email address: rjh@lrlaw.com		
4 5	AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P. 1900 Pennzoil Place – South Tower 711 Louisiana Houston, Texas 77002 Telephone (713) 220-5800 Facsimile (713) 236-0822		
6 7	H. Rey Stroube, III-Texas State Bar No. 19422000 S. Margie Venus- Texas State Bar No. 20545900 Email address: efiler@akingump.com Attorneys for Debtor BCE West, L.P., et al.		
8			
9	UNITED STATES BANKRUPTCY COURT		
10	DISTRICT OF ARIZONA		
11	In Re:		) Chapter 11
12	BCE WEST, L.P., et al.,		) Case Nos. 98-12547
13		Debtors.	<ul><li>through 98-12570 ECF CGC</li><li>Jointly Administered</li></ul>
14	EID # 38-3196719		DEBTOR'S RESPONSE TO HOME
15			DEPOT'S OPPOSITION TO DEBTORS' PROPOSED AGENDA
16			<ul><li>CONTINUING HEARING ON</li><li>MOTION FOR ORDER</li></ul>
17			<ul><li>AUTHORIZING ASSUMPTION OF LEASE OF NONRESIDENTIAL REAL</li></ul>
18			PROPERTY (STORE NO. 1127)
19			)
20			)
21			) )
22			) )
23	-		_)
24			
25			
26			



BC GoldenGate, L.L.C., debtor and debtor in possession (the "Debtor") file this Response with respect to the opposition purportedly filed on July 16, 1999, to the Debtors' Agenda for the regularly scheduled July 20, 1999 hearings. In support of this Response, the Debtor states as follows:

- 1. Home Depot continues to take liberties with clearly defined bankruptcy procedures.
- 2. The Debtor filed its Agenda for the July 20 hearing docket which, among other things, continued the long-pending motion to assume the nonresidential real property leasehold interest with respect to store #1127 located in San Jose, California (the "Motion").
- 3. Home Depot "objects" to the Agenda. While not opposing "the continuance of the substance of the Debtors' Motion," Home Depot suggests that there is something else between these two parties presently pending for the Court's consideration.
- 4. The truth of the matter is that there is no dispute between the Debtor and Home Depot that is before the Court other than the Motion. What Home Depot is trying to do is circumvent appropriate procedural requirements.
- 5. Home Depot is not happy with the Debtor's responses to interrogatories and document production requests. Home Depot sent Debtor's counsel a "meet and confer" letter on July 2.
- 6. On July 15 and 16 counsel for the Debtor conferred with Counsel for Home Depot regarding the discovery objections and possible compromises. No response has been received.



23

24

25

26



- 7. Rule 7037, Bankruptcy Rules is the proper way to bring a discovery dispute before the Court if one is aggrieved or not satisfied by attempts at compromise. Given the content of the Agenda objection, apparently Home Depot does not believe that Rule 7037 has any applicability.
- 8. The Debtor believes the opposite to be true. If Home Depot wants the Court to determine the discovery controversy, it must file a motion to compel. Rule 7037(a) also provides that the controversy will be determined on "reasonable notice" to all persons affected.
- 9. As referenced above there is no controversy before the Court except the dispute as to whether the Debtor should be authorized to assume a leasehold interest. In consideration of the foregoing, the Debtor requests that the Court continue the hearing on the Motion, disregard Home Depot's opposition and consider no discovery issues until an appropriate motion is brought before the Court to which the Debtor has adequate response time.

Respectfully submitted this 19<sup>th</sup> day of July 1999.

## **DEBTORS AND DEBTORS IN POSSESSION**

By: /s/ H. Rey Stroube, III
One of their Attorneys
AKIN, GUMP, STRAUSS, HAUER &
FELD, L.L.P.
H. Rey Stroube, III
S. Margie Venus
1900 Pennzoil Place – South Tower
711 Louisiana
Houston, Texas 77002
(713) 220-5800
(713) 236-0822 (fax)

- and -

